Supreme Court, U. S.
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In The

Supreme Court of the United States

October Term, 1975

No. 74-1409

LONNIE NORTH,

Appellant,

vs.

C. B. RUSSELL, et al.,

Appellees.

ON APPEAL FROM THE
COURT OF APPEALS OF KENTUCKY

BRIEF *AMICI CURIAE* OF THE PETITIONERS AND CLASSES OF PETITIONERS IN WYSE v. HOPKINS AND IN SANCHEZ v. TONKIN

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INTEREST OF *AMICI CURIAE**

The *amici curiae* are the petitioners and the classes of petitioners represented by them in two proceedings currently pending in the Supreme Court of the State of New York, *In the Matter of the Application of Edward R. Wyse, Sr., Individually*

*Counsel for both the appellant and the appellees have consented to the filing of this brief. Copies of their letters of consent have been filed with the Clerk.

and on Behalf of All Other Persons Similarly Situated, for a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules v. Leon Hopkins, as Justice of the Justice Court of the Village of North Hornell and on Behalf of All Other Non-Attorney Justices of Justice Courts and New York State Association of Magistrates, Index no. 34986 (Steuben Co.), and *In the Matter of the Application of Jose Sanchez, on his own behalf and on behalf of all other persons similarly situated, for a determination pursuant to Article 78 of the Civil Practice Law and Rules v. Hon. William M. Tonkin, as Justice of the Justice Court of the Town of Hartsville, and on behalf of all other non-attorney justices of justice courts*, Index no. 8395-75 (Monroe Co.).

Both of those cases were brought by persons charged with offenses for which they could be sentenced to jail if convicted, and in which their only trial would be before a justice who is not an attorney-at-law. Both of the named petitioners have been jailed before trial by a lay justice and released pending trial.* A motion to consolidate the two proceedings has been made and is scheduled to be heard shortly before a Justice of the Supreme Court of the State of New York before whom *Wyse v. Hopkins* has been pending since early 1975.

In both cases the petitioners are challenging Article VI, section 20(c) of the Constitution of the State of New York, which leaves the requirements for holding the position of Justice in a Justice Court to the Legislature of the State of New York, and section 105(a) of the Uniform Justice Court Act of the State of New York, which implements the state constitutional provision by permitting non-attorneys to sit as Justices of Justice Courts. Both cases are brought pursuant to section 1005 of the New York Civil Practice Law and Rules as class actions on behalf of a class of all persons who are now or may in the future

*The petitioner in *Sanchez v. Tonkin, supra*, was jailed by a different lay justice in a separate but related matter to the matter currently pending.

be defendants in any proceeding where upon conviction they would be subject to imprisonment where that proceeding is or will be heard before a Justice of a Justice Court in the State of New York who is not an attorney-at-law admitted to practice before the courts of the State of New York. The cases are also brought against a class consisting of all persons who are now or who may in the future be Justices of Justice Courts in the State of New York and who are not attorneys-at-law admitted to practice before the courts of the State of New York while serving as Justices.

As in this case, the petitioners in the New York cases contend that a system of lay justices conducting proceedings in which defendants can be sentenced to jail upon conviction violates the Fourteenth Amendment to the Constitution of the United States. The decision by this Court in this case may substantially determine the result in the proceedings pending in New York, and it is to bring to the Court's attention the way in which the lay justice system operates in New York and to present argument in support of the position of the appellant Lonnie North that this brief *amici curiae* is filed.

ARGUMENT

The Lay Justice System Violates the Due Process Clause of the Fourteenth Amendment to the Constitution.

The lay justice system violates the due process clause of the Fourteenth Amendment to the Constitution of the United States. The essence of due process, especially in a prosecution in which the defendant can be sentenced to jail if found guilty, is that there be a hearing conducted "in a meaningful manner." *See Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). The trial judge in a criminal case must be intimately conversant not merely with the plethora of substantive and procedural statutes governing criminal cases, but also with the binding precedents of the appellate courts of his state and of this Court, plus whatever decisions from the federal courts of the particular jurisdiction may ultimately affect a defendant's criminal conviction. It is beyond cavil that a person acting as a part-time judge could not adequately master such a body of law with little or no formal legal training, and no higher education; such a person is plainly not "learned in the law."*

Moreover, the role of the trial judge goes beyond simply being "an automaton who insures that technical rules are adhered to. [He is] charged with the duty of insuring that justice, in the broadest sense of that term, is achieved in every criminal trial." *Faretta v. State*, —U.S.—, 43 U.S.L.W. 5004, 5014 (U.S. June 30, 1975; Burger, C.J., dissenting). Even if the Constitution, statutes and rules are technically complied with, there is no assurance that justice will be done. As Professor Maguire commented about an eighteenth century attempt to disband the lawyer dominated courts in Massachusetts, the people of that

*State courts faced with requirements that judges be persons "learned in the law" or the like have almost uniformly held that a person must be an attorney to so qualify. *See, e.g. Opinion of the Justices*, 279 Ala. 38, 181 So. 2d 105 (1965); *State v. Schmahl*, 125 Minn. 533, 147 N.W. 425 (1914); *Jamieson v. Wiggin*, 12 S.D. 16, 80 N.W. 137 (1899).

Commonwealth had apparently forgotten that "The Salem witch trials of 1692 were held before judges none of whom was a lawyer. . . ." J. Maguire, *The Lance of Justice*, at 8 (1928).

An examination of the court systems in which lay justices are allowed to preside at criminal trials demonstrates that those lay justices, as a general rule, cannot reasonably be expected to conduct criminal proceedings in the "meaningful manner" required by due process. Because this case has substantial implications for the similar actions pending in New York State we call to the Court's attention certain facts which have been developed on the record in *Wyse v. Hopkins*, Index no. 34986 (N.Y. Sup. Ct. Steuben Co.).

In that action the intervenor respondent New York State Association of Magistrates has introduced in defense of the lay justice system a survey which it conducted to determine the educational qualifications of lay justices in New York. Six percent (6%) of the lay justices have only a grade school education, forty-seven percent (47%) have only a high school education, and twenty-eight percent (28%) have only an associate's degree (two years of college.)* In total eighty-one percent (81%) thus have less than the amount of college education which is a prerequisite for admission to most law schools and the Bar of most states, including New York.**

Although New York does require that non-attorney justices take a training course prescribed by the Administrative Board of the Judicial Conference, prior to taking such a course the lay

*Affidavit of Eugene W. Salisbury, Esq., sworn to January 24, 1975, in *Wyse v. Hopkins, supra*, as supplemented by Brief in Support of Motion to Dismiss.

**New York requires that an applicant for admission to the Bar examination have completed three (3) years of post-secondary education, or its equivalent, before even commencing the study of law. Section 520.3 of the Rules of the N.Y. Court of Appeals for the Admission of Attorneys and Counselors-at-law.

justice can conduct court anyhow. N.Y. Uniform Justice Court Act, section 105(a). The content of such courses and the examinations given in them hardly serve to prepare a layman, usually without a college degree or even any college training, to conduct criminal trials in 1975.

New York's basic course for lay justices consists of six days of classes, of which a total of about three days are spent on courses relevant to criminal cases (some of that three days includes training in subjects material to both civil and criminal cases, such as evidence, and only thirteen hours is devoted to strictly substantive and procedural criminal law).* The typical materials distributed to the lay justices at these training courses are largely copies of statutes and forms; the sole case law material or material akin to that studied in a law school program is a "Sample of Cases and Materials — Distributed at Basic Program" prepared by the Administrative Board of the Judicial Conference consisting of a copy of one case from the New York Court of Appeals, one case from the Appellate Division of the Supreme Court of the State of New York, and copies of nineteen pages (4 pages from the table of contents and 15 substantive pages, namely pp. 1-13 and 85-86) from Maguire, Weinstein, Chadbourn and Mansfield, *Evidence* (5th ed. 1965).** The cursory nature of the course is exacerbated further by the fact that a lay justice is only required to attend eighty percent (80%) of the scheduled classes, or 4.8 of the six (6) days. N.Y. Uniform Justice Court Rules, section 30.6.

After taking the course the lay justices take a true-false test on which the passing grade is said by the New York State

*Reply Affidavit of Rene H. Reixach, sworn to January 22, 1975, ¶ 2 in *Wyse v. Hopkins, supra*, based on material produced by Administrative Board of the Judicial Conference in response to a request for the production of documents.

**Id.*, ¶ 5.

Association of Magistrates to be 70.* The tests are rudimentary to say the least. A copy of the questions from the test used in November, 1974, is annexed hereto in the Appendix.** Among the questions was the following: "In a non-jury trial in Justice Court the prosecution is not required to prove the defendant guilty beyond a reasonable doubt." (Question 16). A test with questions so simplistic as that, of which only about seventy percent (70%) apply to criminal cases (including questions applicable to trials generally), is no test at all and surely cannot assure criminal defendants of a meaningful hearing before a judicial officer capable of dealing with the complexities of modern criminal law.***

When a criminal defendant is forced to be tried before a lay justice the right to counsel becomes meaningless. While the cases heard before lay justices are limited to misdemeanors and petty offenses, those cases "often bristle with thorny constitutional questions." *Argersinger v. Hamlin*, 407 U.S. 25, 33 (1972).****

This Court has recognized that there is a distinction between a Judge and a lay clerk, *Mitchell v. W.T. Grant Co.*, 416 U.S. 600 (1974); and in *Shadwick v. City of Tampa*, 407 U.S. 345 (1972), this Court held that a lay person can only perform judicial functions if he is "capable of determining [the issues]." (*Id.*, 407 U.S. at 350). Plainly a lay justice is not capable of

*Affidavit of Eugene W. Salisbury in *Wyse v. Hopkins, supra*.

**Reply affidavit of Rene H. Reixach in *Wyse v. Hopkins, supra*, ¶ 4, Exhibits C-14 through C-18.

***In one recent case a lay justice testified that in preliminary proceedings "he has never assigned counsel in a felony case and does not believe he has any right to do so," which a higher court found "clearly shows his complete lack of understanding and comprehension of the Criminal Procedure Law. . . ." *People* v. *Hurlburt*, No. C-160-S (N.Y. Co. Ct. Allegany Co. Sept. 17, 1974), pp. 1, 3.

****For example, in *Wyse v. Hopkins, supra*, the harassment charge is based on alleged invective virtually identical to that in *Gooding v. Wilson*, 405 U.S. 518 (1972). *Cf. Lewis v. New Orleans*, 415 U.S. 130 (1974); *Cohen v. California*, 403 U.S. 15 (1971).

determining legal questions with what is at best cursory legal training; he is not "legally competent," a basic element of due process. *Powell v. Alabama*, 287 U.S. 45, 68 (1932). If as has been suggested, "in all but an extraordinarily small number of cases an accused will lose whatever defense he may have if he undertakes to conduct the trial himself," *Faretta v. State, supra*, that is even more so if it is the trial justice rather than or in addition to the defendant who is not an attorney.

The state of justice before such lay justices has been criticized even by official studies of the court system. As the Report of the Temporary Commission on the New York State Court System, Part I, ". . . And Justice for All" (1973) stated,

> The judges in local courts are part-time and often untrained in the law. Although non-lawyer judges are required to attend legal orientation and refresher courses given by the judicial conference, it is questionable whether such a program can prepare a judge to protect adequately the rights of individuals . . . .(p.23)

So also the American Bar Association's *Standards Relating to Court Organization* (1974), establishes as a minimum professional qualification for a judge that he "should have been admitted to the bar." (§1.21(a)).

Faced with a similar system of lay justices, some of whom had at least been trained, as in New York, but unlike Kentucky and the case of the untrained appellee C.B. Russell, the California Supreme Court concluded that "the failure to provide a judge qualified to comprehend and utilize counsel's legal arguments . . . must be considered a denial of due process." *Gordon v. Justice Court*, 115 Cal. R. 632, 12 Cal. 3d 323, 332, 525 P.2d 72 (Cal. 1974), *cert. denied sub nom. California v. Gordon*, — U.S.—, 95 S.Ct. 1148 (1975). This Court should reach the same result, particularly here where the appellee admittedly had no legal training at all (Appendix at 15-16).

CONCLUSION

For the above stated reasons the judgment below should be reversed.

August 6, 1975

Respectfully submitted,

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APPENDIX A
BASIC EXAMINATION

OFFICE OF COURT ADMINISTRATION
JUSTICES' TRAINING PROGRAM

Name .....
Title .....
School Attended ..... Date .....

Answer all questions "true" or "false" on the line at the end of the question.

1. In the trial of a misdemeanor case in Justice Court the prosecution may demand a jury trial. .....
2. A husband accused of harassment by his wife may be immediately tried in Justice Court. .....
3. A Justice may not dismiss a criminal charge unless the District Attorney consents to such dismissal. .....
4. A civil summons issued out of Justice Court may be served anywhere within the home county of the court or any county adjoining said home county. .....
5. A 20 year old person may be adjudicated a youthful offender. .....
6. The fact that the defendant refused to submit to a chemical intoxication test may be used as evidence against him upon his trial in Justice Court for driving while intoxicated. .....
7. A defendant convicted of assault in the third degree in Justice Court may be fined $100 and discharged upon the condition that he avoid disreputable people and places. .....

A defendant is entitled to trial by jury in Justice Court in the following cases:

8. Harassment .....
9. Driving While Ability Impaired .....
10. Reckless Driving .....
11. If a Justice has a uniform traffic ticket, a signed and witnessed information, a proper speedometer calibration sheet and a supporting deposition before him he may convict the defendant of speeding without a trial even though the defendant pleaded not guilty. .....
12. A Justice may adjudicate an 18 year old person charged with assault in the second degree a youthful offender. .....
13. In a summary proceeding to recover possession of real property, a Justice may grant judgment for rent due in excess of $1,000. .....
14. In a trial for public intoxication in Justice Court a non-medical witness may testify that, in his opinion, the defendant was intoxicated. .....
15. The Civil Practice Law and Rules (CPLR) has no application in Justice Court. .....
16. In a non-jury trial in Justice Court the prosecution is not required to prove the defendant guilty beyond a reasonable doubt. .....
17. Before a defendant may be convicted of driving while intoxicated in Justice Court the prosecution must prove that a chemical test was administered to the defendant and that such test disclosed that the defendant had in excess of fifteen-hundreds of one per centum by weight of alcohol in his blood. .....

18. In a civil jury trial in Justice Court if five jurors agree the jury may render a verdict in favor of plaintiff. .....

19. An accused may be arraigned and tried in Justice Court when the Justice has the motorist's copy of a uniform traffic ticket before him regardless of whether or not the simplified information has been filed. .....

20. An indigent defendant, charged with a traffic infraction, who has not been afforded an assigned counsel, may be imprisoned upon conviction. .....

21. A witness need have no special expertise other than being a police officer in order to be considered an expert and to have his opinion as to the speed of a vehicle admitted into evidence. .....

22. A Justice may legally perform a marriage ceremony where the man and woman are 18 years old, provided that the parents attend and consent. .....

23. An opinion of the Court of Appeals supersedes two opinions of the Appellate Divisions construing the same point of law but with an opposite result. .....

24. In a jury trial in Justice Court part of the jury's function is to determine whether or not physical evidence was legally seized. .....

25. When a trial is held before the Justice, without a jury, minutes of the trial need not be kept. .....

26. Bail should always be set as high as possible in order to impress the seriousness of the charge upon the defendant. .....

27. The New York State Supreme Court is the highest Appellate Court in the State. .....

28. A Town or Village Justice who has no cases and collects no money in a given month is not required to submit a report to Audit and Control. .....

29. The testimony of a person who has been previously convicted of a felony is inadmissible in Justice Court. .....

30. The fact that the defendant was issued a uniform traffic ticket by a police officer for speeding gives rise to the presumption that the defendant was speeding. .....

31. A writ of error *coram nobis* may be employed to vacate a judgment of conviction in Justice Court upon the grounds that an error in fact not appearing on the trial record occurred. .....

32. An appeal from a conviction in Justice Court is considered taken when the defendant files an affidavit of errors with the Court within 30 days of the judgment of conviction. .....

33. If the Justice feels that the affidavit of errors in question 32 has no merit he is not required to do anything further. .....

34. The Statute of Frauds is a group of laws enacted by the Legislature which require certain contracts to be in writing. .....

35. The accuracy of a radar device is so scientifically acceptable that no evidence as to its calibration is necessary at a speeding trial. .....

36. A Justice may refuse to issue a civil summons for a plaintiff when he feels that the plaintiff can afford a lawyer. .....

37. When a Justice is busy all week he may properly schedule a non-jury trial for a Sunday. .....

38. In deciding whether to release, remand or bail a defendant after arraignment, the Justice is required to follow the wishes of the District Attorney. .....

39. Before accepting a guilty plea for speeding the Justice is required to inform the defendant that, in addition to a penalty, his license is subject to suspension or revocation as provided by law. .....

40. In a criminal jury trial the Justice is required to charge the jury only when requested to do so by the defendant. .....

41. Upon a trial in Justice Court the Justice is entitled to a fee of 25 cents for each witness he swears in. .....

42. A Justice should attempt to handle as many cases as possible so that he can demand a salary increase from his Town or Village Board. .....

43. In order for hearsay evidence to be admitted into evidence in Justice Court it must be in affidavit form sworn to before a notary public. .....

44. A youth of 15 years may be tried and convicted in Justice Court if he is charged with the commission of a misdemeanor. .....

45. Once a defendant pleads guilty a Justice has no power to allow that plea to be withdrawn and a not guilty plea substituted. .....

46. In the absence of the District Attorney upon a trial it is mandatory for the Justice to cross-examine all witnesses. .....

47. If a defendant charged with a misdemeanor applies to a higher court for the intervention of a grand jury no further proceedings may be had in Justice Court until that issue is decided. .....

48. In fixing sentence the Justice's sole consideration should be the punishment of the defendant for committing the offense. .....

49. A private citizen may properly arrest a person only when that person has committed a felony. .....

50. In a criminal jury trial in Justice Court the prosecution and defense may properly agree to a jury composed of five persons. .....

If you wish to make any observation or suggestion about the Program please do so:

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